
(2010) 12 KL CK 0020
In the High Court Of Kerala
Case No : A.S. No. 385 of 1996

The New India

APPELLANT

Vs

M.K. Mohammadkunhi

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2010) 12 KL CK 0020

Hon'ble Judges : Thottathil B. Radhakrishnan, J;P. Bhavadasan, J

Bench : Division Bench

Advocate : George Cherian, for the Appellant; George Poonthottam, for the Respondent

Final Decision : Dismissed

Judgement

P. Bhavadasan, J.—The Defendant in O.S. 110 of 1991, who suffered a money decree at the hands of the Sub Court, Kasaragode is the Appellant. The parties and facts are hereinafter referred to as they are available before the trial court.

2. It is not in dispute that the Plaintiff was the owner of a motor vehicle, which met with an accident on 11.8.989 and it was covered by an insurance policy. On information to the Defendant, they conducted a survey and thereafter repairs and maintenance were undertaken for the vehicle. According to the Plaintiff, he spent a sum of Rs. 1,33,289.77 for making the vehicle roadworthy. The claim preferred by the Plaintiff was repudiated. According to the Defendant, some of the bills submitted by the Plaintiff were found to be suspicious in nature and therefore they refused to honour the policy. Even though notice was sent to the Defendant, there was no response. Hence the suit was laid for a sum of Rs. 1,55,953.25.

3. In the defence set up by the Defendant Insurance Company, they say that their private investigator found some of the bills suspicious and spurious in nature and that is the reason why they did not accept the claim put forward by the Plaintiff. They gave details of the bills which are found to be suspicious and

also found that the labour charges as claimed by the Plaintiff have not been paid. Pointing out that the Plaintiff is not entitled to any relief, they prayed for a dismissal of the suit.

4. On the above pleadings, necessary issues were raised. The evidence consists of the testimony of P. Ws. 1 to 4 and documents marked as Exts.A1 to A13 from the side of the Plaintiff. The Defendant had D. Ws. 1 to 3 examined and Exts.B1 to B4 marked. The court below, on an analysis of the evidence, found that seven items, which were made mention of in the judgment, were found to have been not replaced, and therefore the Plaintiff is not entitled to the amount covered in respect of those items. Deducting the sum of Rs. 9,680/-, the Plaintiff was given a decree for a sum of Rs. 1,18,259.77 with interest at 10% per annum and costs. The said decree is assailed.

5. Learned Counsel appearing for the Appellant pointed out that the court below was not justified in granting a decree as it did. The court below had erred in law and has omitted to note that as per Ext.A8, which has been proved through P.W.4, shows that the Insurance Company has assessed the costs for repairs only at Rs. 62,390/-. After deducting the cost of the seven items, which were found to have been not replaced, the balance amount alone was to be given to the Plaintiff. Reliance was also placed on the decision reported in *United India Insurance Co. Ltd. v. Roshan Lal Oil Mills Ltd.*, (2000) 10 SCC 19, wherein it was held that survey report is a statutory document and it has to be given due weight. According to learned Counsel, these vital aspects were omitted to be noticed by the court below and that has resulted in miscarriage of justice.

6. Per contra, learned Counsel appearing for the Respondent pointed out that there is no basis for the contentions now taken by the Insurance Company. The surveyor had accepted that the repairs were carried out as claimed by the Plaintiff and there is no justification in saying that in a private investigation it was found that some of the bills were spurious and suspicious. No notice was given to him about those findings and that has been done behind his back. Referring to Ext.A8, it was pointed out that the said document contains a clause, which shows that the rates quoted in the said document by the surveyor are on the basis of rough assessment and the bills produced by the Plaintiff will have to be verified before settling the claim. As long as that clause stands, the insurance company is not entitled to take the stand that they will confine the amount to what is made mention of in Ext.A8 and they are not bound to pay anything more than that. There is an obligation cast on the insurance company to verify the records produced by the Plaintiff and determine whether the claim made by him is true. According to the learned Counsel, the court below has considered the matter in the proper perspective and has granted a proper decree. No interference is called for with the judgment and decree of the court below.

7. As already noticed, the principal document on the basis of which the defence is taken by the Appellant is Ext.A8. That is the survey report prepared by P.W.4. P.W.4 says that the contents of the said document are true. That shows that the

Plaintiff had assessed the estimate at Rs. 1,31,968/- and the surveyor of the insurance company assessed the estimate at Rs. 62,390/-. As already noticed, the contention of the insurance company is that they are not bound to pay anything more than the amount mentioned in Ext.A8 as per the assessment made by them. It is also contended that there is nothing to indicate in the evidence of P.W.4 that any of the entries in Ext.A8 made by P.W.4 is erroneous or is contrary to true facts.

8. Ext.A8 only gives an estimate made by the surveyor of the insurance company. That document itself shows that it is only a rough estimate and the bills produced by the owner will have to be examined before the claim is settled. That indicates that the assessment made under Ext.A8 by P.W.4 is not final.

9. P.W.1 is the Plaintiff. It is strange to note that none of the bills, which, the insurance company says, were claimed to be spurious, were put to the Plaintiff. He has produced several documents, the non-authenticity of which were not effectively established. Of course it was suggested that he had not paid the repair charges as claimed by him. That was denied by him.

10. P.W.2 is the person who had repaired the vehicle and he says that he has received the amount as stated by the Plaintiff. He accepts Exts.A3 and A3(a) and denies Ext.B2.

11. P.W.3 is the owner of Prakash Auto Mobiles in Kasargod. He accepts that Ext.A2 series of bills were issued by him and that he had received the amounts covered by those bills. He also says that those bills were issued in the regular course of business. In cross-examination he gave an explanation regarding the deviation in the bills produced by the owner of the vehicle said to have been issued by him.

12. D.W.2 is the person who was appointed as the investigator for the insurance claim for damages in the case on hand. He claims to have visited certain places and contended that some of the bills are not genuine. Surprisingly enough, during cross-examination he stated that he did not bother to contact the Plaintiff and find out whether the facts found out by him are correct or not. He had not seen the vehicle after repair. He says that counterfoils of the bills were not shown to him.

13. D.W.3 was the then Assistant Administrative Officer in the investigation department. He also speaks about the spurious nature of some of the bills produced by the Plaintiff. During cross-examination, this witness says that he is unable to say whether the surveyor conducted the inspection after repairs. It is conceded by him that in the report said to have been filed, the date of inspection of Siddi Vinayaka Auto Works has not been stated. A reading of his deposition shows that he is unable to say anything about material aspects of the case.

14. D.W.1 is the Assistant Divisional Manager of the Kannur Divisional Office of the insurance company. In chief examination, he says about the statements said

to have been given by P.W.2 and about the suspicious nature of certain bills said to have been produced by the Plaintiff. In cross-examination, he admitted that the accident took place and there was a policy for the vehicle. He concedes that he did not make any rough assessment of the amount required for repairing the vehicle. He is unable to say whether the repairs suggested in Ext.A8 could be carried out for a sum of Rs. 3,500/-. He has also, in no less terms, admitted that the insurance company did not ascertain what was the actual labour charges incurred by the Plaintiff. He concedes that none of the so-called inspections said to have been made by the investigators of the insurance company was with notice to the owner of the vehicle or atleast that later he was informed about the same and his explanation called for. Surprisingly enough, he has stated that he had not taken any step to find out whether Ext.B2 is correct or not. He also says that he was not able to verify the counterfoils of the bills produced from various shops for purchase made by the Plaintiff. He also says that it was only due to the discrepancy in the number and date that they had suspected the bills. One may now here recall that none of those bills were put to the Plaintiff when he was examined as P.W.1.

15. It is true that the court below has found that the seven works said to have been done were infact not carried out and they are made mention of in paragraph 10 of the judgment. The lower court therefore rightly rejected the claim regarding those items and quantified at Rs. 9,680/-. The lower court chose to accept the version of D. Ws. 2 and 3 to the extent of the claim as regards the seven items made mention of in paragraph 10 of the judgment. According to the lower court, there was absolutely no evidence to show that the bills said to have been produced by the Plaintiff are either spurious or cooked up. The court below had accepted Ext.B3. At the risk of repetition one may notice that Ext.A8 estimate is only a rough estimate and in the said document it is clearly mentioned that the bills produced by the owner of the vehicle will have to be examined before the claim is settled. That by itself will show that that estimate was not final. If that be so, the court below was justified in not accepting Ext.A8.

16. It is true that Ext.A8 is a statutory report. But as already noticed, it is not final and there is evidence to show that atleast one of the surveyors appointed by the insurance company in this case found that the repairs have been carried out as claimed by the Plaintiff. Whatever that be, the court below has chosen to accept Ext.B3 to certain extent and there is no reason to over turn that finding of the court below.

17. The court below was therefore perfectly justified in coming to the conclusion that the Plaintiff is entitled to a sum of Rs. 98,259.77 incurred for purchasing spare parts and Rs. 18,500/-towards repair charges. In the result, this appeal is without merits and it is liable to be dismissed. We do so. There will be no order as to costs.